



National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0007]

Request for Comments on Barriers and Solutions for Submitting Toxicology Data to the Fatality Analysis Reporting System Pursuant to Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments on barriers to and solutions for providing toxicological data on drug-impaired driving investigations of motor vehicle fatalities to the Fatality Analysis Reporting System (FARS) that meet the recommendations described in *Recommendations for Toxicological Investigations of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update*.

SUMMARY: Section 25025 of the Infrastructure Investment and Jobs Act requires NHTSA to submit a report to Congress that, in accordance with recommendations made in *Recommendations for Toxicological Investigations of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update*, (1) “identifies any barriers the States encounter in submitting alcohol and drug toxicology results to the Fatality Analysis Reporting System;” and (2) “provides recommendations on how to address the barriers identified” pursuant to providing the data described in the above recommendations for toxicological investigations. This notice requests public comments on any barriers that States may encounter that would affect their ability to provide the toxicological data described in the 2021 Update of the *Recommendations* document to FARS, as well as recommendations to address those barriers identified.

DATES: The request for comments is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA-2022-0007 using any of the following methods:

Electronic submissions: Go to <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to <https://www.regulations.gov> including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

For more information, contact Dr. Randolph Atkins, Jr., Chief, Behavioral Research Division, NPD-310, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, DC 20590; Telephone number: (202) 366-5597; Email: randolph.atkins@dot.gov.

SUPPLEMENTARY INFORMATION:

Background:

There is a growing concern with drug impaired driving in the United States and around the globe. While alcohol is the drug most often linked to impaired driving and crashes, there are many other drugs that can impair driving ability and contribute to crashes.ⁱ Other potentially impairing drugs include some over-the-counter (OTC) drugs, some prescription drugs, and most illegal drugs. The use of drugs other than alcohol and

in combination with alcohol is widespread. The National Survey on Drug Use and Health (NSDUH) estimated that 53.2 million people in the United States used illegal drugs in 2018, an increase of 2 million people since 2017. The 2018 survey also found that 16.9 million people reported misusing psychotherapeutics in 2018, and 12.6 million people reported driving under the influence of illegal drugs.ⁱⁱ The 2020 NSDUH found use of illicit drugs in the past year had increased to 59.3 million people or 21.4% of the U.S. population age 12 or older,ⁱⁱⁱ and an increase of 6.1 million people since 2018.

NHTSA's *2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers* reported that 20.1% of all drivers surveyed on weekend nights tested positive for the presence of some drug, legal and/or illegal, other than alcohol, a statistically significant increase from the 16.3% of drug-positive drivers found in the 2007 survey.^{iv} NHTSA's study of drug prevalence in road users with serious or fatal injuries admitted to five Level-1 trauma centers or their corresponding Medical Examiner's offices, found that in the months just prior to the current pandemic 50.8% of the drivers in the study had at least one drug in their system (including alcohol) with 17.6% having multiple drugs in their systems. This increased to 64.7% and 25.3%, respectively, during the pandemic in the second quarter of 2020. During this time cannabis presence increased from 20.8% to 32.7% and opioid presence increased from 7.5% to 13.9% in this sample of drivers.^v Clearly, many drivers on the roads today pose a potential danger to themselves and others because of potentially impairing drugs in their systems.

Prescription and OTC drug use is quite common in America. The National Center for Health Statistics estimated that, from 2015-2018, 48.6% of Americans used at least one prescription medication in the past 30 days, with 24% using three or more prescription medications in the last 30 days and 12.8% using five or more prescription medications in the last 30 days. The most frequently prescribed drugs were analgesics,^{vi} which is reflected in the current opioid epidemic. Drivers increase the risk of drug-

impaired driving because they may not be able to distinguish between prescription drugs that are impairing and those that are not.^{vii} Furthermore, the simultaneous use of multiple therapeutic drugs or combining therapeutics with alcohol increases the risk of motor vehicle crashes because of the potential for interaction effects.^{viii}

Another trend fueling concerns about drug-impaired driving is the shift in use, social acceptance, and policies regarding the use of marijuana. Marijuana is defined here as “all substances containing tetrahydrocannabinol.”^{ix} The terms marijuana and cannabis are used interchangeably in this document. From 2001-2002 to 2012-2013, the use of marijuana doubled from 4.1% to 9.5% of the U.S. adult population, with 30% of these users meeting the criteria for marijuana use disorder.^x In 2020, 17.9% of Americans 12 years or older reported using cannabis in the past year (approximately 49.6 million people), and an estimated 5.1% of people 12 and older (approximately 14.2 million people) had a cannabis use disorder.^{xi} Though marijuana is still illegal under federal law, eighteen States and the District of Columbia have now legalized both recreational and medical use of marijuana and seventeen States have legalized the use of medical marijuana. Another thirteen states have legalized marijuana for specific medical conditions.^{xii} In 2018, Canada legalized the recreational use of marijuana at the national level, and Mexico passed a bill legalizing recreational cannabis in 2021. This trend towards legalization has been accompanied by an increase in the presence of marijuana found in drivers. NHTSA’s National Roadside Survey found tetrahydrocannabinol (THC) presence in 12.7% of surveyed drivers in 2013-2014, up from 8.7% in the 2007 survey. In a 2018 study by Washington State, 39.1% of drivers admitted to driving within 3 hours of using marijuana at least once in the previous year, and the biological results from the survey indicated that the presence of marijuana in surveyed drivers had doubled, from approximately 10%, to 20% of all drivers after the state’s implementation of retail marijuana sales.^{xiii} A NHTSA roadside survey in Washington State found

similar results, with 7.8% of drivers testing positive for presence of THC prior to the implementation of legal marijuana in the state. NHTSA found significant increases in THC presence in drivers six months (18.4%) and one year (18.9%) after legalization.^{xiv} While linking the level of marijuana present in biological samples with level of impairment remains challenging, well-established evidence shows that marijuana use detrimentally affects driving-related skills. Marijuana use slows driver reaction time, creates problems with road tracking and maintaining lane position, and decreases cognitive performance and driver attention maintenance. Marijuana use in conjunction with other drugs, such as alcohol, can also have a compounding effect on impairment.^{xv} The current shifts in policy and marijuana use increase the public health concerns regarding drug-impaired driving.

The lack of adequate data to determine the scope and magnitude of the drug impaired driving problem presents a major challenge in addressing the issue of drug-impaired driving.^{xi,xvi} Estimates show that comprehensive societal costs for alcohol-impaired driving were approximately \$194 billion in 2010;^{xvii} however, the data required for conducting similar analyses for the comprehensive societal costs of drug-impaired driving are lacking. The data currently available on drug-impaired driving and motor vehicle crashes have many shortcomings.^{xviii} These include inconsistent drug testing policies and procedures across jurisdictions, such as considerable variability in who is tested, what drugs are tested for, detection capabilities of the laboratory, and what specimen matrices (blood, oral fluid, urine, etc.) are used.

In 2009,^{xii} and again in 2017,^{xi} NHTSA recommended that States provide separate statutes for alcohol- and drug-impaired offenses to provide incentive for “law enforcement officers to pursue a possible drug-impaired driving charge even when a BAC equal to or above the limit of .08 g/dL has already been established,” but few states currently have such statutes. Many jurisdictions only test for drugs when alcohol levels

are below *per se* limits that indicate a driver, by law, is intoxicated by alcohol, and forego drug testing when alcohol *per se* limits are met. However, high percentages of specimens in impaired driving cases that were tested only for alcohol are often positive for other drugs, too.^{xix} Some jurisdictions do not perform any drug testing for motor vehicle crashes. Reporting of the toxicology findings is also inconsistent and often lacks sufficient specificity regarding whether it is reporting a screening test or a confirmation test, and other critical information, such as the drug panels and thresholds of detection used, is often left out. This widespread inconsistency in drug testing and lack of detail in reporting of toxicology on reports of motor vehicle crashes and fatalities creates significant problems for policy makers and traffic safety professionals trying to address the problem of drug-impaired driving.

In many States, the large number of laboratories conducting post-mortem drug testing (typically ordered at the county level by the coroner or medical examiner) often do not look for the same core list of drugs and do not use comparable testing techniques with similar thresholds of detection because there is a lack of standardization regarding the drug panels and detection thresholds used for motor vehicle crashes. This prevents data from different laboratories from being combined to get a clear picture of drug use within the State. Similarly, in many States, individual law enforcement agencies contract with different laboratories which do not screen for the same set of core drugs, nor use comparable testing techniques with similar thresholds of detection. This limits the ability to characterize and monitor / conduct surveillance and better understand the issue of statewide driver drug use. “Currently, the limitations (in the drugged driving data) severely constrain interpretation of the data. Comparisons across labs, States, or years are problematic.” This is reflected at the national level in the FARS data.^{xx}

A recent expert panel on the impact of marijuana on the driving while intoxicated (DWI) system, which included various experts from divisions in the departments of

motor vehicles, law enforcement, and the courts and corrections departments as well as government data systems, reported a serious need for more and better data on drug use by drivers as well as standardized laboratory practices for drug toxicology, including which drugs are tested for, what detection thresholds of the drugs are used, confirmation testing results, and comprehensive reporting on the tests conducted and the matrices used.^{xxi} Recent reports from the Governors Highway Safety Association (GHSA) have stressed the urgent need for better, more comprehensive toxicology testing and reporting of toxicology test results for motor vehicle crashes.^{xxii, xxiii} This need was also emphasized in NHTSA's reports to Congress on marijuana-impaired driving (2017)^{xi} and drug-impaired driving (2009)^{xii}, and two National Transportation Safety Board (NTSB) reports on impaired driving.^{xxiv, xxv}

Recommendations and Request for Comments:

The Center for Forensic Science Research & Education (CFSRE) and the National Safety Council Alcohol, Drugs and Impairment Division (NSC-ADID) report, *Updates for Recommendations for Drug Testing in DUID & Traffic Fatality Investigations* (2016), summarized a survey it conducted of toxicology laboratories from across the country. The survey identified "current practices, capabilities, research needs and gathered information regarding the scope and sensitivity of testing."^{xxvi} Subsequently, the Drugs, Technology, Pharmacology and Toxicology Section of the National Safety Council's Alcohol, Drugs and Impairment Division reviewed the survey results and updated their 2013 published recommendations for the toxicology community,^{xxvii} which were published as "Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2017 Update" in the *Journal of Analytical Toxicology*.^{xxviii} These recommendations are referenced in Section 25025 of Pub. L. 117-58. The CFRSE and NSC-ADID conducted a follow-up survey of laboratories in 2020, after which the recommendations were updated and

published as “Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update” in the *Journal of Analytical Toxicology*.^{xxix} These recommendations address the identified toxicology needs for drug-impaired driving cases. Coupled with comprehensive reporting of the toxicology findings, the widespread use of these toxicology recommendations could greatly enhance understanding of the scope and magnitude of drug-impaired driving and help traffic safety professionals better address this vital public health issue.^{xxx} The toxicology recommendations in the 2021 Update are available, free of charge, online at: <https://pubmed.ncbi.nlm.nih.gov/34086916/>.

Given the growing national concern over drug-impaired driving and the clear need for standardized drug-impaired driving toxicological testing and comprehensive reporting on the toxicological results, NHTSA is preparing a Report to Congress on Drug-Impaired Driving Data Collection that identifies the barriers to States in providing the toxicological data to FARS as described in the NSC-ADID document, recommends solutions to overcome those barriers, and describes the steps the Department of Transportation and NHTSA will take to assist States in improving toxicology testing in cases of motor vehicle crashes and reporting of alcohol and drug toxicology results in cases of motor vehicle crashes provided to FARS. Our first step in producing this report is the collection of information from the public on barriers and possible solutions. NHTSA therefore seeks public comment on any barriers that States may have to adopting these recommendations, and any comments on what is needed to overcome these barriers.

As previously noted, the *Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update* were developed by an expert panel of toxicologists based on the results of a national survey of toxicology laboratories. These voluntary recommendations are for forensic toxicological drug testing and reporting for all drivers, motorcycle and moped operators, bicyclists and

pedestrians involved in fatal motor vehicle crashes, and all drivers who are arrested or convicted for impaired operation of motor vehicles, regardless of their tested Blood Alcohol Concentration (BAC) or Breath Alcohol Concentration (BrAC). The recommendations provide standardized lists of drugs, matrices (blood, oral fluid, urine, etc.), and detection threshold levels for testing. The guidelines include two tiers of drugs for testing: Tier 1 drugs (Table II in the document) are drugs that are found throughout the country and that should be tested for in all jurisdictions; Tier 2 drugs (Table III in the document) are less common or predominantly found in specific areas of the country, so they may only need to be routinely tested for in those localities or on a case-by-case basis. NHTSA believes that the voluntary adoption of these toxicology guidelines would greatly improve data collection, and support future initiatives by a wide variety of traffic safety stakeholders using this toxicological data to help reduce drug-impaired driving. It is critical that comprehensive and consistent data on this vital public health issue are available for use in all parts of the impaired-driving system, from law enforcement to adjudication and treatment to public policy.

Drug impaired driving is a growing concern; however, the information currently available on the scope and magnitude of drug impaired driving is unclear. Today, there is great variation across the country regarding which drivers are tested for drug use, what specimens are collected for testing, what drugs are tested for, and what threshold detection levels are used for drug tests. Comprehensive and consistent toxicological data is needed to better inform the public and public policy on this growing public health problem. This testing and data are also essential to increasing the effectiveness of law enforcement and adjudication efforts in drug-impaired driving cases and to making America's roads safer for the driving public.

In support of our efforts to improve the toxicological data provided to FARS and the States, reduce the problem of drug-impaired driving, and "assist States in their efforts to

increase public awareness of the dangers of drug-impaired driving,”^{xxxix} NHTSA hereby requests public comment on the following:

- (1) Identification of any barriers or challenges that States currently encounter in submitting alcohol and drug toxicology results to the Fatality Analysis Reporting System (FARS)
- (2) Suggestions for overcoming those current barriers and challenges identified to improve the delivery of data to the FARS
- (3) Identification of any barriers or challenges that States may encounter in collecting the toxicology data as described in *Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update* (<https://pubmed.ncbi.nlm.nih.gov/34086916/>) and submitting those alcohol and drug toxicology results to the Fatality Analysis Reporting System (FARS)
- (4) Suggestions for overcoming those barriers and challenges identified for collecting the toxicological data as described in the *Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update* to improve the delivery of the data to the FARS.

Authority: 44 U.S.C. Section 3506(c)(2)(A)

Issued in Washington, D.C.

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